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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,405	02/12/2004	Sean P. Kyne	MAT 319	7763
23581	7590	02/12/2007		
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			EXAMINER HYLINSKI, ALYSSA MARIE	
			ART UNIT	PAPER NUMBER
			3711	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/779,405

Applicant(s)

KYNE ET AL.

Examiner

Alyssa M. Lowen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lithophane support blister positioned between the panel and backing sheet must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. Claims 1-3, 5-10, 12-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dods (6152298), Lapides (3173540) and Goldfarb (6287492). Dods discloses a backing sheet (22) with a toy (14) that can take the shape of a character (column 2 lines 17-20) and panel (12) associated with the backing sheet (Fig. 1) by a transparent cover blister (Fig. 2) that substantially encloses the toy and panel (Fig. 1). A toy support blister (18) supports the toy and is located such that the panel is located between the support and cover blisters (column 6 lines 15-21). A panel support blister (30) is disposed between the panel and the backing sheet (Fig. 2). Both support blisters support the panel (Fig. 2). The panel includes an image that is associated with the toy and functions as part of a base (Figs. 1 & 3). The device of Dods discloses the basic inventive concept, substantially as claimed, with the exception of the backing sheet having an aperture with which the panel is aligned and the panel being a lithophane panel. Lapides discloses packaging for an object having a cover and backing sheets (Fig. 3) with apertures (12) formed therein and in which is aligned an object (Fig. 1), showing this feature to be old in the display packaging art. It would have been obvious to one of ordinary skill in the art from the teaching of Lapides to include an aperture in the backing sheet of Dods in order to not hinder a potential purchaser's view of the item while still in the packaging. Goldfarb discloses a lithophane-type panel (903) that can be attached to a toy figure (Fig. 20) to create interesting visual displays when backlit (column 8 lines 5-7). Although the reference does not disclose a panel that is separate from the toy and functions as a base, it does disclose using a lithophane-type panel with

a toy figure (Fig. 20) and furthermore rearrangement of the location and position of the plate is not a patentable advance. *See In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950)*. Therefore, it would have been obvious to one of ordinary skill in the art from the teaching of Goldfarb to modify the panel of Dods to a lithophane-type panel in order to create a visually interesting display. Even though Goldfarb does not disclose a true lithophane panel in that it is made out of porcelain, the examiner notes that a mere selection of known materials as recited in the claims, on the basis of suitability for the intended use would be entirely obvious. *See in re Leshin, 125 USPQ 416 (CCPA 1960)*.

3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dods, Lapides and Goldfarb. The references disclose the basic inventive concept, substantially as claimed, with the exception of including a plurality of toys and panels. It would have been obvious to one of ordinary skill in the art to multiply the number toys and panels, since such a modification would have involved a mere duplication of parts. A duplication of parts is generally recognized as being within the general skill of a worker in the art. *See In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)*.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dods, Lapides, Goldfarb and Mickelberg (5289916). The references disclose the basic inventive concept, substantially as claimed, with the exception of having an indication that the panel is viewable when backlit. Mickelberg discloses a packaged toy having instructions or indicia on the packaging to alert a person to features available from the toy while still packaged (Fig. 1). Although the reference does not expressly teach an

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indication that a panel is viewable when backlit it teaches providing instructions to a potential consumer on the packaging.

Response to Arguments

5. Applicant's arguments with respect to claims 1-3 and 5-20 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Lowen whose telephone number is 571-272-2684. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AML


STEPHEN BLAU
PRIMARY EXAMINER